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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Southwest Student Services Corporation

Serial No. 74/582,,574

Thomas E. Spath of Abelman, Frayne & Schwab for Southwest Student Services Corporation.

Angela Lykos, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Hohein, Hairston and Wendel, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Southwest Student Services Corporation has filed an application to register the term "COLLEGECARD" for "financial services, namely providing to students enrolled at participating institutions of post-secondary education a low-cost line of credit accessed by a transaction card for payment of education-related expenses to the institution and to participating merchants affiliated with the institution".¹

¹ Ser. No. 74/582,574, filed on October 5, 1994, which alleges dates of first use of September 30, 1987.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the term "COLLEGE CARD" is a generic term for applicant's services and thus is unregistrable.²

Applicant has appealed. Briefs have been filed and an oral hearing was held. We affirm the refusal to register.

It is well established that, in the case of a generic designation, the burden is on the Patent and Trademark Office to show the genericness of the designation by "clear evidence" thereof. See, e.g., *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). See also *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987). As to the standard for evaluating genericness, the Board in *In re Leatherman Tool Group Inc.*, 32 USPQ2d 1443, 1449 (TTAB 1994), stated that:

The test for determining whether a designation is generic, as applied to the goods [or services] set forth in an application or registration, turns upon how the term is perceived by the relevant public. *See Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552-53 (Fed. Cir. 1991) and cases cited therein at 1553. Such perception is the primary consideration in a

² As noted, for instance, in *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 728 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986), a generic designation is "the ultimate in descriptiveness" and is incapable of registration on either the Principal Register or the Supplemental Register. While applicant, in response to the refusal to register, amended its application, pursuant to Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), to include a claim that the term "COLLEGE CARD" has acquired distinctiveness and furnished evidence in support thereof, the Examining Attorney has indicated with respect thereto that: "The applicant has submitted sufficient evidence to support a claim of acquired distinctiveness; however, because the mark is generic, this evidence will not alter the determination that the mark is unregistrable."

determination of genericness. See Loglan Institute Inc. v. Logical Language Group Inc., 962 F.2d 1038, 22 USPQ2d 1531, 1532 (Fed. Cir. 1992). As Section 14(3) of the Trademark Act, 15 U.S.C. §1064(3), makes clear, "[a] ... mark shall not be deemed to be the generic name of goods [or services] solely because such mark is also used as a name to identify a unique product [or service]"; instead, "[t]he primary significance of the ... mark to the relevant public rather than purchaser motivation shall be the test for determining whether the ... mark [is or] has become the generic name of the goods [or service] on or in connection with which it has been used." Consequently, if the designation sought to be registered is understood by the relevant public primarily to refer to the class or genus of goods [or services] at issue, the term is generic. See H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., [728 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)] Evidence of the relevant public's understanding of a term may be obtained from any competent source, including newspapers, magazines, dictionaries, catalogs and other publications. See In re Northland Aluminum Products, Inc., 777 F.2d 1566, 227 USPQ 961, 963 (Fed. Cir. 1985).

In the present case, applicant asserts by way of background information that its financial services, as identified in the application, "are very specific and specialized" in that:

the financial services rendered under the COLLEGECARD mark are available only to students at educational institutions which institutions themselves have investigated the nature, quality and source of the services and have determined, in effect, on behalf of their students, that participation would be beneficial to both the institution and to the students (and in most cases the students' families.) It is also to be noted that the participating educational institution selects those goods and services, which in its judgment, are "education-related." Applicant's services are not of the same type as those provided by American Express, AT&T, Mastercard or Visa, i.e., applicant is not offering a general-purpose credit card. The

description of services distinguishes applicant's services from those providing ordinary consumer credit services.

Applicant further contends, in view thereof, that for the purpose of determining the issue of genericness, "the relevant segment of the public constitutes potential and existing students, parents of potential and existing students, and educational financial administrators, business managers, student loan officers and the like."

Applicant essentially argues that, as to the excerpts, which form the evidentiary basis for the refusal to register, made of record by the Examining Attorney from her searches of the "NEXIS" database, "the great majority of articles relied upon by the Examining Attorney are from credit card and banking industry trade publications" and therefore are at most directed to only a very small part of the relevant purchasing public. Applicant insists that, "when the scope and the results of these searches are fairly analyzed, it can only be concluded that sufficient probative evidence of widespread generic usage is lacking and that the Examining Attorney has not met the burden of proving that the mark is generic." Specifically, applicant maintains that:³

³ Although applicant, notably without citation to authority, "ask[s] the Board to take notice of the fact that [excerpts from] the *Southwest Newswire* and the *PR Newswire* are not sources of information that are likely to be read by applicant's customers," applicant is correct that, contrary to the position of the Examining Attorney, stories obtained from proprietary news services are of little, if any, probative value with respect to genericness and other descriptiveness issues. This is because, unlike newspaper, magazine and journal articles, wire-service stories are not presumed to have circulated among the general public so as to have had any influence on purchasers' attitudes towards the particular term or designation in

In the present case, the record includes only a very few instances of the use of the term "COLLEGE CARD" in the popular press (newspapers, magazines, etc. of general circulation). These few stories are spread over a number of years and the references are to a variety of general credit card programs --none of which has any resemblance or relation to the specialized financial services provided by applicant under the COLLEGECARD mark.

To the extent that the Examining Attorney relies upon use of the term "college card" in the trade press (e.g., *The American Banker*), we submit that the trade press readership constitutes but a very small part of the relevant universe of prospective customers and users of applicant's specialized services. This evidence should be ... given very little weight in the analysis

Applicant consequently concludes that "the evidence of record is *de minimus* and simply does not support a finding that the term 'college card' is understood to be generic for applicant's services by the universe of consumers to whom applicant provides its services."⁴

question. See, e.g., *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1555 (TTAB 1987) at n. 6 and *In re Men's Int'l Professional Tennis Council*, 1 USPQ2d 1917, 1918 (TTAB 1987) at n. 5. By the same token, we concur with applicant that "very little weight" should be given to the excerpt of record "from the Congressional Record of testimony ... provided to a specialized committee by a credit card industry spokesperson." Accordingly, no further consideration will be given to such excerpts.

⁴ Applicant also claims that, prior to its own adoption and use of the term "COLLEGECARD" as a mark, it "acquired by assignment the rights to a prior U.S. registration for the identical mark" and which was registered on the Principal Register "without a §2(f) claim." While noting, in particular, that "[i]n 1988, the Office issued Reg. No. 1,491,499" for the mark "COLLEGECARD" for services identified as "financial services, namely providing a line of credit to students attending any of various types of institutions of higher learning for the purchase of computers and related equipment," applicant also states that it "inadvertently allowed the '499 registration to lapse, thereby necessitating the filing of the present application." Although admittedly "not ... controlling on the issue raised by this

The Examining Attorney, on the other hand, contends that "the relevant public perceives COLLEGE CARD as a term for a credit card designed specifically for college students to finance education-related expenses." In particular, the Examining Attorney maintains that as shown by the "NEXIS" excerpts of record, of which we find the following to be the most pertinent, "the term 'college card' has evolved into a generic designation recognized by the relevant public as identifying a type of credit card directed toward college students" (**emphasis added**):⁵

"**Credit cards** have gotten mighty specialized these days. Airline cards let you earn frequent flier miles; **college cards** build up tuition credits; environmental cards help you save the Earth." -- Charleston Gazette, September 13, 1995;

"AT&T's coupons are being offered to new and existing cardholders. Its **college card** differs from the standard Universal card in several ways. It comes with credit education material and a purchase protection program" -- American Banker, September 5, 1995

appeal," applicant urges that, "[a]t the very least, the existence of the prior registration raises serious doubts about the basis for the present genericness refusal." However, aside from the fact that an expired registration merely constitutes evidence that the registration issued, see, e.g., *Sunnen Products Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987), and that whatever benefits, including the evidentiary presumptions afforded by Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), are lost when the registration expires or is canceled, see, e.g., *Anderson, Clayton & Co. v. Krier*, 478 F.2d 1246, 178 USPQ 46, 47 (CCPA 1973), the issue to be determined is not whether the term sought to be registered was generic in 1988, when the registration which applicant subsequently obtained was issued, but whether such term is presently generic. Applicant's expired registration is therefore of no probative value.

⁵ While applicant seems to hint that it is significant that none of the "NEXIS" excerpts use the single-term expression "COLLEGE CARD," we find that the usages in such excerpts of the two-word designation "college card" to be relevant inasmuch as applicant, as demonstrated by the specimens of use submitted with the application, invariably uses the term "COLLEGE CARD" as "CollegeCard," a format which clearly engenders the same commercial impression as the two words "college card".

(article headlined: "Marketing: AT&T and American Express Pile Extras on **College Cards**");

"Two years ago, Mr. Guitart applied for and received a Visa card offered by a large credit-card bank that had set up a table in Georgetown's student center. Like most **college cards**, Mr. Guitart's Visa did not require a parent's signature or even that he have a job.

....
She said 60 percent of **college students** end up getting a **credit card** before they graduate, and many easily accumulate five or six cards. In general **college cards** carry interest rates toward the higher end of the spectrum, she added." -- Washington Times, June 3, 1994;

"The **college card** market has been dominated by Citibank, Chase Manhattan, Discover and American Express" -- Credit Card News, May 1, 1994;

"For years, **credit card** issuers quietly have cultivated the **college card** market with little scrutiny from lawmakers. Citicorp, Discover, American Express, Chase and other issuers now have an estimated 3.5 million **college-student** cardholders." -- Credit Card News, March 15, 1994 (article headlined: "U.S. Rep. Kennedy Crashes the **College Credit Card** Party");

"AT&T Universal Card Services is making its **credit card available to college students** at 550 colleges and universities nationwide, it says. The card is being offered with no annual fee for life and a discount on long-distance telephone calls. To ensure that balances are paid off promptly, the monthly minimum payments would be higher for student cardholders than regular card holders, AT&T says. The **college card** contains features normally associated with gold bank cards" -- Buffalo News, August 25, 1993;

"Some programs are branching off campus. Florida State University's FSUcard, ... carried by 38,000 students, is accepted by

300 merchants in the Tallahassee area and in Honor and Plus automated teller machines.

Prepaid **college cards** may be functional enough, and scarce enough, to make collecting worthwhile." -- American Banker, May 26, 1993;

As to applicant's contention that its financial services are distinguishable from the types of "college card" or general purpose credit card services for college students mentioned in the "NEXIS" excerpts since applicant's services are specifically limited to providing college students with a low-cost line of credit, accessed through a transaction card, for payment solely of education-related expenses, the Examining Attorney asserts that:

The applicant's argument is unconvincing. "Education-related" expenses cover a wide array of expenditures. The applicant's specimens explain that the applicant's credit card can be used to purchase:

- Tuition, fees, room and board
- Books and Supplies
- Meals, bookstore items, parking
- Library charges, student health insurance and more

The applicant's specimens have broadly defined an "education-related" expense as any type of necessary expenditure incurred while attending college. Thus, the applicant's credit card can be used to finance the purchase [of] a variety of goods and services while the user attends college. While the card is only available to be used at pre-approved merchant locations or at the institution itself, many of these pre-approved merchants provide goods or services that the non-preapproved merchants would provide such as groceries or school supplies. Moreover, a student can charge tuition on a college card issued by Visa just as easily as he or she can charge tuition on the applicant's credit card or college card. The

applicant's credit card therefore performs the same function as credit cards issued by companies such as AT&T or Visa.

Upon careful consideration of the entire record, we agree with the Examining Attorney that the term "COLLEGE CARD," being the phonetic equivalent of the words "college card," is a generic term for any kind of credit card services aimed at college students for financing their educational-related living expenses. The relevant public for applicant's services, we find, would be composed not only of potential and existing students, their parents, and educational financial administrators, business managers, student loan officers and the like individuals at institutions of post-secondary education, as contended by applicant, but would also include "participating merchants affiliated with the institution[s]," as stated in the recitation of applicant's services.

The "NEXIS" excerpts noted above, including those which appeared in trade publications which would be read by persons interested in credit card financing, clearly demonstrate that the designation "college card," and hence the term "COLLEGE CARD," primarily signifies, to members of the relevant public, any type of credit card arrangements which are directed to the payment of the kinds of educational-related financial expenses incurred by college students. Whether such a niche market is served by those who, like applicant, provide a specialized line of credit or by issuers of general purpose credit cards which may tailor their offerings to college students' needs, it is plain that credit card services related to the educational expenses of students at

institutions of higher learning are aptly and commonly known as college card services to those in the trade and to actual or prospective users thereof.

While we recognize that, unlike a general purpose credit card, applicant's financial services are specialized in that they are provided only through participating institutions of post-secondary education, applicant's advertising literature, including its specimens of use, unmistakably show that its "COLLEGE CARD" services in essence are a type of college student credit card or "college card". For example, as the following from one of its brochures explains:

CollegeCard is an open-ended revolving line of credit that provides repayment terms like a student loan and the convenience of a credit card. Students present it when they pay for their educational expenses (such as tuition, fees, room and board, books and supplies). But while it works like a credit card, CollegeCard offers some big pluses for your institution that most credit cards don't give.

....

All credit cards charge a merchant of discount fee. But with CollegeCard, we'll work with you to establish a rate equal to or lower than the rates you've been paying for most credit cards.

....

Unlike most credit cards, we don't deduct the discount fees when we make deposits to your account.

Similarly, another brochure, submitted as applicant's specimens of use, states among other things that:

CollegeCard has been endorsed for use on campus by your college. You can use it at

approved locations just as you would any other bank credit card.

....

With their long-term commitment to providing federally guaranteed student loans, Southwest Student Services Corporation and its affiliate are able to provide CollegeCard at terms more competitive than traditional credit cards.

....

The interest rate on CollegeCard is substantially less than other bank credit cards. It's interest rate is variable, as are those on many student loans and commercial credit cards.

....

With CollegeCard, students get the low interest rates and friendly repayment terms of a student loan with all the convenience of a bank credit card.

As is apparent from the above, in reaching our conclusion that the term "COLLEGE CARD" is generic, we have not ignored or disregarded the brochures and other evidence furnished by applicant in support of its *de facto* claim of acquired distinctiveness. Such evidence, as described by applicant in its request for reconsideration of the final refusal, is not, however, persuasive of a different result. Specifically, we observe that despite applicant's not insubstantial advertising expenditures of just over \$2,000,000 during the years from 1992 through 1996, it nevertheless received only 3,375 applications from prospective cardholders (with no indication of the number which have actually been approved) and its current receivables (as of September 25, 1996) stood at an amount in excess of just \$1,200,000. Thus, while applicant appears to have enjoyed at

least some degree of success for its "COLLEGE CARD" services, the "NEXIS" excerpts noted above are clear and unambiguous as to the meaning of such term in connection with credit card services which are provided specifically to college students to pay for their education-related expenses. The latter is simply more convincing proof of the relevant public's perception of the term "COLLEGE CARD" than the evidence furnished by applicant. See, e.g., In re Pennzoil Products Co., 20 USPQ2d 1753, 1758-59 (TTAB 1991).

This case, therefore, is unlike the situation in *Merrill Lynch*, supra at 1143-44, which presented a mixture of uses which our principal reviewing court found to be so indeterminate as to be insufficient proof of genericness. The record herein, instead, satisfactorily establishes that, to the relevant public, the term "COLLEGE CARD" primarily means or signifies a category or type of credit card services which are directed to college students to finance their educational-related living expenses and thus it is generic for applicant's services.

Decision: The refusal under Section 2(e)(1) is affirmed.

G. D. Hohein

P. T. Hairston

H. R. Wendel
Administrative Trademark Judges,
Trademark Trial and Appeal Board